



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

March 18, 2008

Reply to
Attn Of: OWW-131

MEMORANDUM

SUBJECT: Capability Analysis for the Swinomish Indian Tribal Community (SITC) Water Quality Standards Program Authorization

FROM: Sally Brough
Tribal Water Quality Standards Coordinator

TO: Rich McAllister
Assistant Regional Counsel

I have reviewed the Swinomish Indian Tribal Community (SITC or Tribe) application under Section 518 of the Clean Water Act (CWA) for authorization to administer the water quality standards program under Section 303(c) and the 401 program of the CWA. I have examined whether the Tribe has met the requirement to demonstrate capability to carry out the functions of an effective water quality standards program [40 CFR Section 131.8(a)(4)]. Section 131.8(b)(4) specifies that a tribe must provide *a narrative statement describing the capability of the Indian Tribe to administer an effective water quality standards program*. The narrative statement should include:

- A description of the Tribe's previous management experience;
- A list of environmental and public health programs administered by the Tribe;
- A description of the entity which exercises executive, legislative, and judicial functions for Tribal government;
- A description of the Tribal agency that will assume primary responsibility for reviewing, implementing, and revising water quality standards; and
- A description of the technical and administrative capabilities of the staff that will administer and manage the water quality standards program.

The following analysis is based on my review of the SITC Application for Treatment as a State (TAS) under the Clean Water Act (CWA) Sections 303(c) and 401 dated June 14, 2006 and the Supplemental Submission in Support of Swinomish TAS Application dated June 28, 2007. I considered information from EPA Region 10 Tribal Trust and Assistance Program (Memo from Diana Boquist, Tribal Coordinator February 13, 2008). In addition I have worked with the Tribe during the last two years on the development of draft water quality standards (WQS).

Previous Management Experience

The SITC has a long and distinguished record of administering federal and tribal programs and obtaining federal grants to protect and improve the health and welfare of tribal members and the environment of the Reservation (Memo from Diana Boquist, Tribal Coordinator dated February 13, 2008). The Tribe's application provides a good summary of their management experience.

The SITC provides a wide variety of government services. These services include: law enforcement and social services; health, education, and welfare; tribal housing; drinking water and sewage disposal; administration of planning, zoning and building programs; taxation of economic activities subject to tribal jurisdiction; and a number environmental programs for the protection of public health.. The SITC employs one hundred individuals including police officers medical professionals, managers, scientists and other staff needed to carry out the duties of a sovereign Indian nation. The application demonstrates that the SITC has extensive management experience for implementation of the 303(c) and the 401 programs of the CWA.

Environmental and Public Health Programs Administered by the SITC

Environmental Programs

The SITC application demonstrates that SITC has extensive experience in administering and managing environmental programs. The SITC enforces a Tribal Environmental Policy Act, an Air Quality Act, a Shoreline Management Act, and a Land Clearing Act (Exhibits 19 through 22). Recently the SITC has been granted TAS under section 105 of the Clean Air Act (42 USC Section 740). The SITC has a water quality program, public health programs, air quality program, and a noxious weed program.

The SITC has experience cleaning up hazardous waste sites on the reservation. The SITC administers a public health program for the SITC and three other area Tribes. This program is funded by the U.S. Indian Health Service and includes septic system inspections and provides instruction and regulatory oversight for food establishments and food preparation. The Tribe's noxious weed control program uses integrated pest management and annually removes 100 tons of *Spartina sp* from tribal tidelands.

The Tribal department responsible for administering and implementing CWA programs is the Swinomish Water Resources Program. A detailed list of the existing environmental and public health programs include the following.

- Comprehensive Land Use Plan – This plan is a cooperative land use plan that resolves land use conflicts between Skagit County and the Tribe. The plan describes Tribal goals and policies guiding and regulating land use to preserve and protect natural environmental and tribal cultural values. (Exhibits 23 and 24).
- Drinking Water Quality Protection Program – SITC has delineated a wellhead protection area around the three wells that supply approximately 1,000 residential, commercial, and industrial consumers with drinking water.
- Non-Point Source Pollution Program – The Tribe has taken the lead in three program areas to address non-point source pollution affecting reservation waters. SITC is

involved in waste water facilities planning for construction of a sewer trunk line and connection of over 200 homes. The Tribe has developed improved on-site wastewater disposal regulations to eliminate bacterial pollution of tidelands. SITC is a member of the Skagit River Cooperative, a two tribe fisheries management organization, that gathers and catalogs non-point pollution data within the Skagit River basin for an overall fisheries evaluation. The information from this cooperative is used to plan and implement habitat restoration projects.

- Regional Implementation Plans – The Tribe has developed or is in the process of developing implementation plans for fecal coliform contamination, noxious weeds, emergency response, air shed quality, coordinated water supply system plan and wastewater treatment and water supply. All of these implementation plans are in cooperation with a variety of government entities (city, county, State).

Water Programs

The Water Resources Program has extensive experience managing Reservation water resources. A brief description of specific water programs is presented below.

- Tribal Environmental Agreement – The Water Resources Program has been partially funded through EPA CWA section 106 and 319 grants. The SITC's performance under these grants has been satisfactory (Memo dated February 13, 2008 from Diane Boquist). The Water Resources Program administers several programs (CWA, SDWA, TSCA, and RCRA) in a comprehensive manner to preserve the quality of the SITC water resources (Exhibit 29).
- Ambient Water Quality Monitoring Program – The purpose of this program is to collect base line water quality data, characterize the waters of the Reservation, identify waters which fail to meet proposed water quality standards, and assess the effectiveness of existing regulations to protect Reservation water resources. The Tribe has a monitoring program that monitors reservation waters for pH, temperature, dissolved oxygen, conductivity, salinity, chloride, turbidity, and fecal coliform bacteria. The monitoring program includes bioassessments on perennial streams, shoreline assessments and inventories in estuarine and marine waters, and toxic pollutant sampling in at-risk Reservation waters.
- Groundwater – The groundwater characterization project objectives include a description of the groundwater hydrology of the Reservation, the interactions between groundwater and surface water, and integration of this information into management tools (numerical model, monitoring plan, and resource protection policies and ordinances)
- Tidelands and Nearshore – The tidelands surrounding the Reservation are an important cultural, environmental, and subsistence resource for the Tribe. The SITC conducts comprehensive tideland resource monitoring. Tideland monitoring includes: testing for paralytic shellfish poisoning in clams, surveys of clam health and distribution on Reservation beaches, shellfish testing for bioaccumulative toxics, monitoring the nearshore environment for fish habitat and environmental health, and monitoring the effectiveness of *Spartina* eradication techniques. Exhibit 36 of the June 28, 2007

supplemental information presents the extensive study conducted by the Tribe on *Bioaccumulative Toxics in Subsistence-Harvested Shellfish*. This study was completed under EPA grant number R-826-467-01.

- Geographic Information Services (GIS) – The Swinomish GIS provides support to the Water resources Program by GPS locating and mapping of environmentally significant features on the reservation and providing maps for planning purposes.
- Restoration Projects – In conjunction with the water quality monitoring activities the Water Resources Program has identified three sites where both water quality and wildlife habitat are degraded. The Tribe has completed one restoration project and has secured funding for three more restoration projects at Fornsby Creek, and a Lone Tree Creek habitat improvement project and a Lone tree Creek water quality improvement project.
- Environmental Education – The Water Resources Program aims to increase public awareness and knowledge about environmental issues and problems related to water quality. The program has developed environmental education tools (“Tox in a Box” for grades K-12), published articles in the monthly Swinomish Tribal Community publication and produced video segments for the Swinomish Cable Channel.

The variety of environmental, public health, and water resources related programs, described above, that are developed and implemented by the Tribe demonstrate that it has extensive management experience with a wide range of environmental and public health programs. The application and the two years that I have worked with the Tribe on the development of WQS demonstrate that the SITC has extensive management experience for implementation of the 303(c) and the 401 programs of the CWA.

Entity exercising executive, legislative and judicial functions of Tribal government

An eleven member Tribal Senate carries out the legislative functions of the SITC. The Senate elects a Chairman and a vice-Chair. The Chairman and vice-Chair carry out the executive functions of the government. Judicial functions are handled by the Swinomish Tribal Court.

Tribal Agency Responsible for Reviewing, Implementing, and Revising, Water Quality Standards

The Water Resources Program in the Swinomish Office of Planning and Community Development (Planning Department) is the responsible agency for the development, implementation, and enforcement of water quality standards on the Reservation. The Water Resources Program implements a variety of CWA programs that are described in a previous section.

Description of the Technical and Administrative Capabilities of the Staff

The Water Resources Program employs 4 full time staff and 4 part-time staff with expertise in water quality, wetlands, geology, hydrogeology, geochemistry, chemistry, environmental education, freshwater ecology and environmental risk assessment and management. All of the full time staff have college degrees to at least the Bachelors degree level. Two of the full time staff have masters degrees and one is a PhD candidate. The remaining staff are technicians who are trained in basic water quality, fisheries, and wildlife data gathering techniques.

Todd Mitchell is the Water Resource Program Manager. He has held this position for seven years. He has a Bachelor of Science degree in Geology from Dartmouth and a Masters of Science degree in Geology and hydrogeology from Washington State University. Jamie Donatuto is working with Todd Mitchell to develop the Tribe's WQS. She has been in this job for the last five years. She has a Bachelor of Science degree in Environmental Science and Chemistry from Western Washington University. She is a PhD candidate from the University of British Columbia. She is the project manager for the *Bioaccumulative Toxics in Native American Shellfish Project* which examines the effects of pollution to both humans and the environment. Exhibit 36 of the June 28, 2007 supplemental information presents the extensive study conducted by Ms. Donatuto: *Bioaccumulative Toxics in Subsistence-Harvested Shellfish*. (This study was completed under EPA grant number R-826-467-01.)

I have worked with Todd Mitchell and Jamie Donatuto as the SITC has considered and developed draft water quality standards. Todd is knowledgeable about the WQS program elements. He has been thoughtful in deciding what elements of the standards to adapt specifically to tribal needs and how to balance tribal concerns with concerns from the local community. He has a good understanding of what implementation of the WQS program entails. He has worked constructively with EPA and Washington throughout the Tribal WQS development process. Jamie is knowledgeable about the effects of bioaccumulative toxics and has developed a new approach for evaluating risk from pollution in shellfish. Her new risk assessment method recognizes the culturally different diets of the SITC and she uses this information to accurately describe the risks to tribal members.

The application and the two years that I have worked with the Tribe on the development of WQS demonstrate that the SITC has extensive expertise and management experience for implementation of the 303(c) and the 401 programs of the CWA.